ST 01-0098-GIL 06/15/2001 GROSS RECEIPTS

Caterers incur Retailers' Occupation Tax liability on their entire gross receipts from sale, without deductions on account of overhead costs, such as charges for linens, dishes, flowers or delivery. (This is a GIL.)

June 15, 2001

Dear Xxxxx:

This letter is in response to your letter dated April 2, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at http://www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

I am and have been trying for ***YEARS*** to determine what items are taxable and at what rate. I am in the catering/rental business. I rent and delivery food carts (ice cream, pop corn, hot dog, BBQ picnics, ect) I understand that all food items are taxable.

1. Any labor that is lined item on an invoice is it taxable.

2. Rental of equipment used at the event (pop corn, pretzel machines etc.)

3. Delivery of equipment to each job

4. Service of others - clowns, bands, jugglers

5. Rental items of others - tents, tables chairs

6. Convention service - I have a division that stores customers products and we deliver and set up the equipment. It is a package price that is divided up by gas, labor, management fee, and insurance.

7. I have called the department of revenue using the phone number provided on my return each month. Each time I called I would get the same response. That the items I use are non taxable except for the food. Today I called again and had a conversation with PERSON who happened to be a supervisor. He explained the same things but mentioned that it was his opinion and he could not give me a written notice. This was the first time someone explained this to me. He said it was his 'interpretation' but if I wanted it in writing I would need to speak to your department.

I am confused as to why you have people giving their personal interpretation to tax payers and that if it becomes questionable the opinion is not binding. Seems to me it is a waste of tax payers money to have people explain the law who are not qualified to do so and DO NOT explain this to you. This also seems miss leading and wrong. I have been reassured over the phone several time that what I am doing is correct. The last time I called I spoke to a guy who would only give me his first name and last initial. He said he was not allowed to give his last name.

My question is how can I use the guidance from the department when I call?

DEPARTMENT'S RESPONSE

Your letter indicates that you are engaged in business as a "party planner." In some instances, you act as a caterer. In other instances, you do not act as a caterer, and only arrange events in which no tangible personal property is transferred. The tax liabilities you incur will differ depending upon the activities you engage in.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See the enclosed copy of Section 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money … and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever…." See, 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business are not deductible from his gross receipts. This principle is also articulated in Section 130.410 of the Department's rules, enclosed. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs … or any other expenses whatsoever" are not deductible from gross receipts.

As a result, tax is imposed upon a caterer's entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor and set-up and delivery. Each of these items is a part of your cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. They are simply costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

When a caterer makes separate charges to customers for items which are not associated with the sale of food, such items are not taxable, provided that they are separately listed on the invoice to the customer and are initialed by the customer. This would be the case, for instance, with charges for entertainment (the clowns, bands, and jugglers you mention).

If, instead of acting as a caterer, you rent tangible personal property to others, you are not acting as a retailer. Rather, you are acting as a lessor. In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the tangible personal property purchased for leasing purposes. See Section 130.220 and 130.2010. As end users of tangible personal property located in Illinois,

lessors incur Use Tax on their cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. In Illinois, a true lease generally has no buy-out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

As stated above, lessees do not incur any tax liability in a true lease situation. However, it is typical of true leases to contain contractual provisions stating that the lessees will reimburse the lessors for the lessors' tax costs. This is not a matter of Illinois tax law but of private contractual agreement between the lessors and the lessees. If the lessees agree to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

For instance, if you rent a popcorn machine to person who has set up a booth at a convention, you would be acting as a lessor and incur Use Tax on the cost price of the popcorn machine purchased for leasing purposes. If, in connection with that rental, you sell popcorn to the person occupying the booth, you would be acting as a retailer, and would incur Retailers' Occupation Tax on the selling price of the popcorn.

Persons who are engaged in activities in which no tangible personal property is transferred do not incur tax liability. The Retailers' Occupation Tax, Use Tax, Service Use Tax and Service Occupation Tax apply only when there is a transfer of tangible personal property.

As you can see, different tax laws apply to caterers, lessors and persons who provide services in which no tangible personal property is transferred. The tax laws themselves mandate these different outcomes. I hope that this information has clarified the taxes which may apply to persons who act as party planners.

Very truly yours,

Jerilynn T. Gorden
Senior Counsel, Sales & Excise Tax
Phone: 217-782-6996

Enc.